



OFFICIAL RECEIVER'S OFFICE

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24 March 2021

OFFICIAL RECEIVER'S OFFICE CIRCULAR NO. 1/2021

**Multiple winding-up petitions
presented against the same company**

The Official Receiver has noted recently that in a number of winding up proceedings, more than one winding-up petition has been presented against the same debtor company. In one case, there were more than 4 winding-up petitions presented against the same debtor company. It appears that a practice has developed for a petitioner to present a winding-up petition against a debtor company either, without first checking whether the company is already subject to another winding-up petition, or with full knowledge of, and notwithstanding the existence of the prior petition.

2. In a recent decision of the Honourable Mr. Justice Harris in *Re China Greenfresh Group Co Ltd* [2021] HKCFI 36, his Lordship explained the relevant principles and practice applicable to the issue of a winding-up petition. In short, it is well-established that it is inappropriate for there to be more than one petition pending against a company. As a winding-up petition is a class remedy, the legislation, rules and court practice are generally based upon the notion that there should be one petition against a debtor company at any one time. It is most unusual for there to be more than one petition pending simultaneously in respect of the same debtor company. Where there are exceptional circumstances justifying the existence of multiple petitions, any winding-up order would still be made on the first petition. Any creditor who presents a winding-up petition while another petition is pending does so at the risk of costs.

3. Solicitors who act for a creditor client intending to present a winding-up petition against a debtor company are reminded that before advising their client to present a winding-up petition, they should take steps to conduct online search through the GovHK Portal at this link > <https://www.gov.hk/en/business/registration/bankruptcy/compulsory.htm> (in normal circumstances, the information can be updated into the system within 3 working days from receipt of the winding-up petition) and ascertain whether there is any prior winding-up petition already presented against the debtor company and pending disposal by the court. Where there is already a pending petition, the creditor should consider appearing on the first petition as a supporting creditor, instead of presenting a fresh and second petition himself. Where necessary, a creditor should consider substitution for a withdrawing petitioner, pursuant to Rule 33 of the Companies (Winding-up) Rules (Cap. 32H).

Signed

(Ms. Phyllis McKenna)

Official Receiver

To: The Law Society of Hong Kong